

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

JAMES RANDALL FOSTER \$
VS. \$ CIVIL ACTION NO. 1:03cv1376
WARDEN JACKIE EDWARDS \$

ORDER

The court previously entered a Final Judgment dismissing this petition for writ of habeas corpus as barred by the applicable statute of limitations. Petitioner has filed a notice of appeal, which the court will construe as a request for a certificate of appealability. Such a certificate is required in order to appeal this court's Final Judgment.

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." *Barefoot v. Estelle*, 463 U.S. 880 (1982); *Butler v. Byrne*, 845 F.2d 501 (5th Cir. 1988). This standard means that the movant must demonstrate that the issues raised are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions are worth encouragement to proceed further. The court must either issue a certificate of appealability indicating which issues satisfy the applicable standard, or must state the reasons why such a certificate should not issue. FED. R. APP. P. 22(b).

In this case, the standards for issuance of a certificate of appealability are not met. For the reasons set forth in the

memorandum opinion previously entered, the court finds that the question of whether this petition is barred by the applicable statute of limitations is not subject to debate among jurists of reason. It is therefore

ORDERED that the request for a certificate of appealability is **DENIED**.

SIGNED this the **5** day of **July, 2005**.

A handwritten signature in black ink, appearing to read "Thad Heartfield", written over a horizontal line.

Thad Heartfield
United States District Judge